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PPLICATION NO.	FILING DATE		FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/872,339	06/01/2001		Timothy Gardner	CEL-003	8547
759	90	12/17/2002			
Thimothy Gard President and Fo		ı.D.	EXAMINER		
Cellicon Biotech	nologie		LEFFERS JR, GERALD G		
650 Beacon Stre		loor	APTIDIM		
Boston, MA 02215			ART UNIT	PAPER NUMBER	
			-	1636	
				DATE MAILED: 12/17/2002	

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Appl	icant(s)					
• •		09/872,339	39 GARDNER ET AL.						
	Office Action Summary	Examiner	Art U	Jnit					
		Gerald G Leffers	Jr. 1636						
	The MAILING DATE of this communication app	pears on the cover	sheet with the corresp	oondence address					
Period for Reply									
THE I - External formula after - If the - If NO - Failur - Any r	ORTENED STATUTORY PERIOD FOR REPL' MAILING DATE OF THIS COMMUNICATION. Insions of time may be available under the provisions of 37 CFR 1.1: SIX (6) MONTHS from the mailing date of this communication. Period for reply specified above is less than thirty (30) days, a reply period for reply is specified above, the maximum statutory period or re to reply within the set or extended period for reply will, by statute eply received by the Office later than three months after the mailing and patent term adjustment. See 37 CFR 1.704(b).	36(a). In no event, howe y within the statutory min will apply and will expire s	ver, may a reply be timely filed mum of thirty (30) days will be IIX (6) MONTHS from the mail become ABANDONED (35 U	considered timely. ling date of this communication. .S.C. § 133).					
1) 🖂	Responsive to communication(s) filed on 01.	June 2001 .							
2a)□	•	nis action is non-fi	nal.						
3)	Since this application is in condition for allowa			ution as to the merits is					
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.									
-	ion of Claims	2	/						
•	Claim(s) <u>1-28</u> is/are pending in the application 4a) Of the above claim(s) is/are withdra		ation						
		Will from conclude							
•	5) Claim(s) is/are allowed.								
	6)								
• —	Claim(s) <u>1-28</u> are subject to restriction and/or	election requirem	ent.						
· ·	ion Papers	•							
9) The specification is objected to by the Examiner.									
10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.									
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).									
11) The proposed drawing correction filed on is: a) ☐ approved b) ☐ disapproved by the Examiner.									
If approved, corrected drawings are required in reply to this Office action.									
12)☐ The oath or declaration is objected to by the Examiner.									
Priority under 35 U.S.C. §§ 119 and 120									
13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).									
a) ☐ All b) ☐ Some * c) ☐ None of:									
	1. Certified copies of the priority documen								
	2. Certified copies of the priority documen								
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 									
14) 🗌 /	Acknowledgment is made of a claim for domest	tic priority under 3	5 U.S.C. § 119(e) (to	a provisional application).					
a) ☐ The translation of the foreign language provisional application has been received. 15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.									
Attachmer	nt(s)	_							
2) 🔲 Noti	ce of References Cited (PTO-892) ce of Draftsperson's Patent Drawing Review (PTO-948) rmation Disclosure Statement(s) (PTO-1449) Paper No(s) _	4)	Interview Summary (PTC Notice of Informal Patent Other:	0-413) Paper No(s) Application (PTO-152)					
IS Patent and	Trademark Office								

Application/Control Number: 09/872,339

Art Unit: 1636

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15, drawn to a recombinant adjustable threshold genetic switch feature a pair of nucleic acid constructs encoding repressor proteins operatively linked to inducible and constitutive promoters, classified in class 536, subclass 23.1.
- II. Claims 16-28, drawn to a method of alternating transcription from a pair of promoters, classified in class 435, subclass 69.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the adjustable genetic switch can be used in materially different processes for using the product. For example, the nucleic acids within the adjustable switch could be labeled and used to identify similar repressor and/or promoter sequences in other sources. Alternatively, the adjustable genetic switch could be used to produce even more complicated constructs comprising additional nucleic acid sequences for regulating expression of a protein of interest.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Application/Control Number: 09/872,339 Page 3 Art Unit: 1636 Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR) 1.143). Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i). Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald G Leffers Jr. whose telephone number is (703) 308-6232. The examiner can normally be reached on 9:30am-6:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel can be reached on (703) 305-1998. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7939 for regular communications and (703) 305-7939 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196. Devald A. heff Gerald G Leffers Jr. Examiner Art Unit 1636 Ggl December 12, 2002